

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

NICHOLAS RADOESKY,	:	
Plaintiff	:	
	:	
vs.	:	CIVIL NO. 1:CV-06-1073
	:	
MICHAEL J. ASTRUE,	:	(Judge Caldwell)
Commissioner of Social	:	
Security,	:	(Magistrate Judge Mannion)
Defendant	:	

O R D E R

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

Plaintiff has appealed Defendant's refusal to award disability benefits and supplemental security income under the Social Security Act. See 42 U.S.C. §§ 401-433 and §§ 1381-1383c. The magistrate judge has filed a report recommending that the appeal be denied. We are considering Plaintiff's objections to the report.

We have reviewed the record, the briefs on appeal and Plaintiff's objections. We will accept the magistrate judge's recommendation and write here on only one of the objections, that the administrative law judge (ALJ) failed to consider the opinion of a treating neurologist set forth on a "mental residual functional capacity assessment" form. In part, the neurologist opined that Plaintiff's "[a]bility to understand and remember

short and simple (one or two-step) repetitive instructions or tasks" was "moderately severe[ly]" impaired. (Doc. 8, exhibit to Pl.'s Br.). This went to the issue of whether Plaintiff was able to perform jobs requiring him to have the "capacity to perform unskilled sedentary work . . . requir[ing] no more than one-to-two step operations." (Record, p. 26). The ability to engage in such work was the basis of the ALJ's conclusion that Plaintiff was not disabled.

The magistrate judge rejected the argument because Plaintiff failed to prove that the neurologist's form had been made part of the record.<sup>1</sup> We agree. In his objections (doc. 14), Plaintiff presents for the first time a cover letter describing the evidentiary material he was submitting after the ALJ hearing. The treating neurologist's form was included in that description, but that does not prove the form became part of the record. We also note that Plaintiff's brief on appeal to the Appeals Council indicates he was aware that the form had not become part of the record (record, p. 440).

Accordingly, this 20th day of September, 2007, upon consideration of the report of the magistrate judge, filed August

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<sup>1</sup> As the magistrate judge noted, we review the ALJ's decision based only on the evidence before the ALJ. *Matthews v. Apfel*, 239 F.3d 589, 594 (3d Cir. 2001).

2, 2007, the objections that were filed (doc. 14), and upon independent review of the record, it is ordered that:

1. The magistrate judge's report (doc. 13) is adopted.

2. Plaintiff's appeal of the decision of the defendant, Commissioner of Social Security is denied.

3. The Clerk of Court shall close this file.

/s/William W. Caldwell  
William W. Caldwell  
United States District Judge